



HLS1X: CopyrightX: Spring 2013 Course Report

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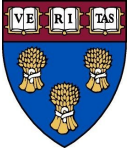
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HLS1X: CopyrightX

Course Report

HarvardX Working Paper #5 – 2013 Spring*



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The term “copyright system” encompasses three levels of material: theory (the arguments, drawn primarily from economics, political theory, and philosophy, concerning why and how the law should regulate uses of expressive materials); doctrine (the rules currently in force concerning uses of expressive materials and the ways in which those rules are typically interpreted and applied); and practice (how those rules affect various fields of art, industry, and culture – literature, music, film, photography, journalism, software design, architecture, fashion, comedy, games, and so forth).

CopyrightX is an online course on Copyright Law. The course explores current copyright law and the ongoing debates concerning how that law should be reformed. Through a combination of pre-recorded lectures, weekly seminars, live webcasts, and online discussions, participants in the course examine how law seeks to stimulate creative expression.

HLS1X was first offered as a HarvardX open online course in Spring 2013. It was taught by Professor William Fisher of Harvard Law School. Modified versions will be offered in the spring semesters of 2014 and 2015. This document describes and evaluates the 2013 version and outlines plans for the 2014 version.

HarvardX

* Fisher, W. (2014). *CopyrightX* (HarvardX Working Paper Series No. 5).

Content

The course seeks to provide participants a deep understanding of the copyright system in the United States, a rough understanding of the ways in which the copyright systems of other countries differ from the U.S. system, and knowledge of the primary ways in which the systems of all countries are constrained by multilateral treaties.

As used in the course, the term “copyright system” encompasses three levels of material: *theory* (the arguments, drawn primarily from economics, political theory, and philosophy, concerning why and how the law should regulate uses of expressive materials); *doctrine* (the rules currently in force concerning uses of expressive materials and the ways in which those rules are typically interpreted and applied); and *practice* (how those rules affect various fields of art, industry, and culture – literature, music, film, photography, journalism, software design, architecture, fashion, comedy, games, and so forth).

Personnel

Several people helped create and run the 2013 version of the course. The core team consisted of Nathaniel Levy (Project Manager), Kendra Albert (Head Teaching Fellow), Ed Popko (Technical Support Specialist), Professor David Karger of M.I.T. (an expert in both computer science and online pedagogy), and myself. We were assisted by Samantha Earp (Interim Director of HarvardX), Marlon Kuzmick (Associate Director of the Derek Bok Center for Teaching), Amar Ashar (Manager of Special Initiatives for the Berkman Center), and Justin Reich (Richard L. Menschel HarvardX Research Fellow). Last but not least, twenty Harvard Law School students served as teaching fellows and helped plan the venture. In addition to Kendra Albert, they were Ruchi Desai; Ana Enriquez; Lauren Henry; Phil Hill; Ashton Lattimore; Wesley Lewis; Esther Lim; Nathan Lovejoy; Alyssa Martin; Matthew McDonnell; Tom McMahon; Rio Pierce; Jacob Rogers; Rachel Sachs; Charlie Stiernberg; Allison Trzop; Martha Vega Gonzalez; Justin Ward; and Heather Whitney.¹

A similar team will be responsible for the 2014 version. The core group will include Nathaniel Levy (Project Manager), Ana Enriquez (Head Teaching Fellow), and Ed Popko (Technical Support Specialist).

Format

The principal novel characteristics of the original version of CopyrightX were:

1. *Multiple audiences.* The course was presented simultaneously to three audiences:

- a) 86 students enrolled in the residential course on Copyright Law taught at Harvard Law School;
- b) 500 participants (most of them non-lawyers) in an online HarvardX course hosted on the edX platform, divided into twenty 25-person discussion groups, each taught by one of the Harvard Law School teaching fellows; and

¹ The biographies of the teaching fellows are available at <http://copyx.org/teaching-fellows/>.

² For information about H20, see <http://cyber.law.harvard.edu/research/h20>.

- c) a “satellite” course taught by Sarah Hsia (a Harvard Law School graduate) to 25 students who met weekly in Jamaica.

2. *Hybrid Pedagogy.* The course relied on five methods to instruct and engage students:

- a) weekly lectures (which presented the main sets of rules and policies pertaining to copyright);
- b) reading assignments (which examined in more depth some of the issues addressed in the lectures);
- c) synchronous Socratic discussions focused on case studies (intended to refine students’ understanding of the rules and policies by testing their application to real or hypothetical problems);
- d) asynchronous online discussions (in which students were encouraged to explore all aspects of the course); and
- e) “special events” (in which invited guests [most of them non-lawyers] discussed the impact of copyright law on their fields of endeavor and responded to questions from the audiences).

The course employed various technologies to make these five kinds of materials available to the multiple audiences:

- All of the lectures were recorded; the recordings were then posted online, so that the members of all three audiences could watch them at their convenience prior to the Socratic discussions and could review them prior to taking exams. The HLS students and the members of the Jamaica satellite watched versions of the lectures posted on YouTube, while the edX students watched versions posted on the edX platform.
- All of the reading assignments were also posted online. Most were made available in three alternative formats: Adobe PDF; Microsoft Word; and H2O (a Web-based platform, developed by Jonathan Zittrain and the Berkman Center, for creating, editing, organizing, consuming, and sharing course materials).²
- The Socratic discussions for the Harvard Law School students and the members of the Jamaica satellite were conducted in classrooms in traditional face-to-face fashion, whereas the discussions of the 20 edX “sections” were conducted online (at different times to accommodate students in many time zones) using Adobe Connect conferencing software.³
- All of the asynchronous discussions were conducted online.
- Finally, the HLS students attended the “special events” in person, while the edX and satellite students participated via live interactive webcasts.

Appendix A displays a chart showing the relationships among the audiences and technologies.

3. *Experimentation.* The course aimed to enhance knowledge concerning online education. Several pedagogic hypotheses (detailed in the following subsections) underlay the course design, and we sought to gather enough data concerning student experience and performance to test

² For information about H2O, see <http://cyber.law.harvard.edu/research/h2o>.

³ For information about Adobe Connect, see <http://www.adobe.com/products/adobeconnect.html>.

those hypotheses. Additionally, in the edX component of the course, we divided the students into four subgroups, which were treated differently along two dimensions:

- a) Half of the participants (and half of the sections) used what we called the “case-law curriculum,” which consisted of an abbreviated version of the set of readings assigned in the Harvard Law School course.⁴ The other half used what we called the “global curriculum,” which included fewer judicial opinions, relied more on summaries of doctrine, and emphasized copyright law in jurisdictions other than the United States.⁵
- b) Half of the participants (and half of the sections) used the conventional online discussion tool included in the edX platform to conduct their asynchronous discussions. The other half used both the edX tool and a collaborative web-based markup tool (called “NB”) that had been created by Professor David Karger and his team at M.I.T.⁶ The latter enabled participants to annotate the assigned reading materials and to conduct focused discussions concerning specific aspects of those materials.

Our goal, of course, was to determine which of the alternative approaches in each dimension was more effective.

4. Integration. In two ways, the audiences for the course interlocked. First, students in all three of the groups participated in the live “special events.” Comments and questions from the HLS and edX students were curated (using the Berkman Center’s “Question Tool” software⁷) and then projected onto screens located behind the featured speaker – enabling every student to see the comments submitted by the other students.

Secondly, some of the edX teaching fellows were current students in the Harvard Law School course. One of the principal hypotheses underlying the course was that this would generate pedagogic benefits – most importantly, that the quality and durability of the HLS students’ understanding of copyright law would be enhanced by teaching the material to others.

5. Limited Enrollment. Another hypothesis central to the course design was that engagement in small-group discussions of hard problems, guided by a knowledgeable and skilled teacher, is crucial to learning. To make engagement of this sort possible, we limited enrollment in the edX course to the number of participants who could be accommodated in 20 discussion groups – corresponding to the number of HLS students who volunteered to serve as teaching fellows. We admitted 25 persons to each such group, guessing that each group would shrink during the semester to roughly 15 – the number often cited as the optimal size of a seminar. The result: edX enrollment was capped at 500.

To provide us with the information necessary to make admission decisions, we required that applicants complete an extensive application, including three short essays. We received over 4,100 such applications during the three-week window in which applications were being accepted. When evaluating those applications, we looked for manifestations of intelligence,

⁴ The case-law curriculum is available at http://cyber.law.harvard.edu/people/tfisher/CopyrightX_SyllabusA_2013.htm. The HLS curriculum, of which it is an abridged version, is available at http://cyber.law.harvard.edu/people/tfisher/Copyright_Syllabus_2013.htm.

⁵ The global curriculum is available at http://cyber.law.harvard.edu/people/tfisher/CopyrightX_SyllabusB_2013.htm.

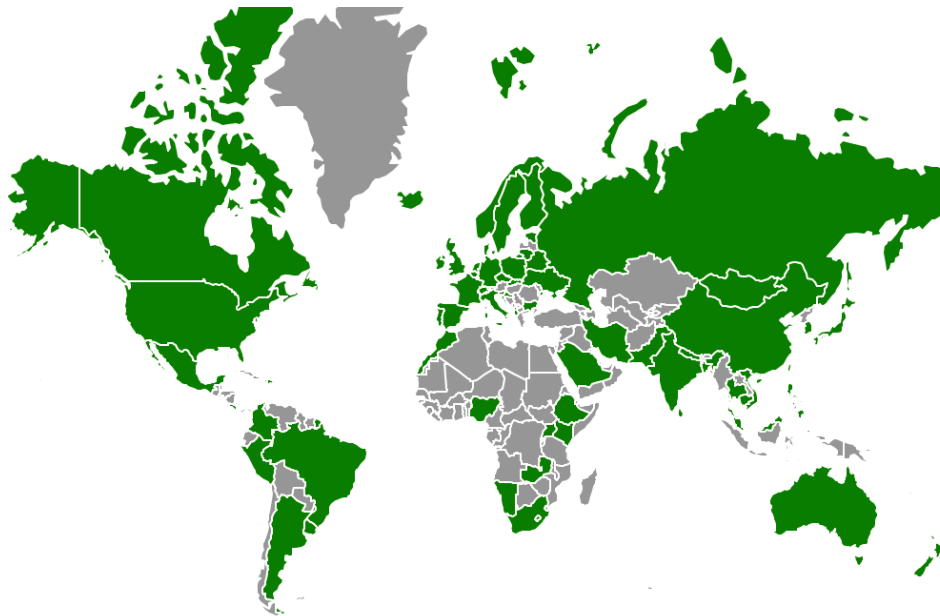
⁶ For additional information concerning NB, see <http://ocit.mit.edu/gallery/projects/nb-pdf-annotation-tool>.

⁷ See <http://cyber.law.harvard.edu/question>.

facility with English, and commitment to completing the course – but we did not privilege educational attainment or legal knowledge. Instead, we strove to select a class that would be diverse on many dimensions: gender, country of residence, age, occupation, and interests. We achieved at least the last-mentioned goal. The 500 admitted students included:

- 53% men; 47% women⁸
- 29 lawyers; 43 persons with Ph.D.s; 177 persons with Master's Degrees (not including those with Ph.D.s)
- a spectrum of ages, from 13 to 83
- 291 residents of the United States; 203 residents of other countries

The 70 countries from which students participated are shown below:



6. *Open Access to “Content.”* As indicated above, although access to the course was sharply limited, access to the course materials was not. All of the recorded lectures, all of the reading assignments, and all of the lecture notes (in the form of two interactive maps) were made available to the public under Creative Commons “attribution-noncommercial-sharealike” licenses.⁹

7. *Rigor.* None of the course materials were simplified or de-tuned to enable the general public to digest them more easily. The recorded lectures were pitched at Harvard Law students, and the case studies were selected and drafted so as to challenge Harvard Law students. Our hope was that they would nevertheless be accessible and engaging for the students in the other audiences.

8. *Autonomy of Teachers.* The edX teaching fellows and Sarah Hsia, the teacher of the satellite course, were given broad discretion when determining what and how to teach. They were not given lesson plans for their discussion sessions. They decided which of the large catalogue of

⁸ The applications to the course were not so well balanced. 62% came from men; 38% from women.

⁹ All of the materials are still available on the current homepage for the course: <http://copyx.org>. For the terms of the Creative Commons licenses, see <http://creativecommons.org/licenses/>.

case studies prepared for the course and which pedagogic techniques would be most effective for their students. The edX teaching fellows were told that substantial participation in the seminars was essential to pass the course, but they decided how to interpret and apply that principle for their own groups.

9. Evaluation by Examination. Assessing a student's understanding of copyright law using a multiple-choice test is infeasible. A traditional examination is far from perfect, but it is better. Working on that assumption, the course made passage of an examination a precondition for receipt of a certificate of completion. The Harvard Law School students were administered a two-part exam: a three-hour in-class closed-book test, designed to determine their ability to apply copyright law to a novel set of facts; and an open-book "take-home" exam, designed to test their critical understanding of copyright theory. The edX students were administered a single 24-hour "take-home" test that integrated the two components of the HLS test but required students to show somewhat more facility with copyright law outside the United States. The participants in the Jamaica satellite course did not take an exam. As a result, they received certificates of participation, but were not eligible to receive certificates of completion.

10. Free. We did not charge for access to the course, access to the course materials, certificates of completion, information concerning performance on the examination, or any ancillary services.

Assessment

To assist us in evaluating the various features of the 2013 course, we gathered several sorts of data:

- profiles of all applicants and all admitted students derived from their applications for admission;
- the results of an automated "pretest," taken by all admitted students, which was designed to assess their knowledge of the main features of the copyright system at the outset of the course;
- attendance records for all of the online seminars and special events;
- the grades received by the students on the individual questions on the final examinations; and
- surveys administered to the edX students, the Harvard Law School students, and the teaching fellows.

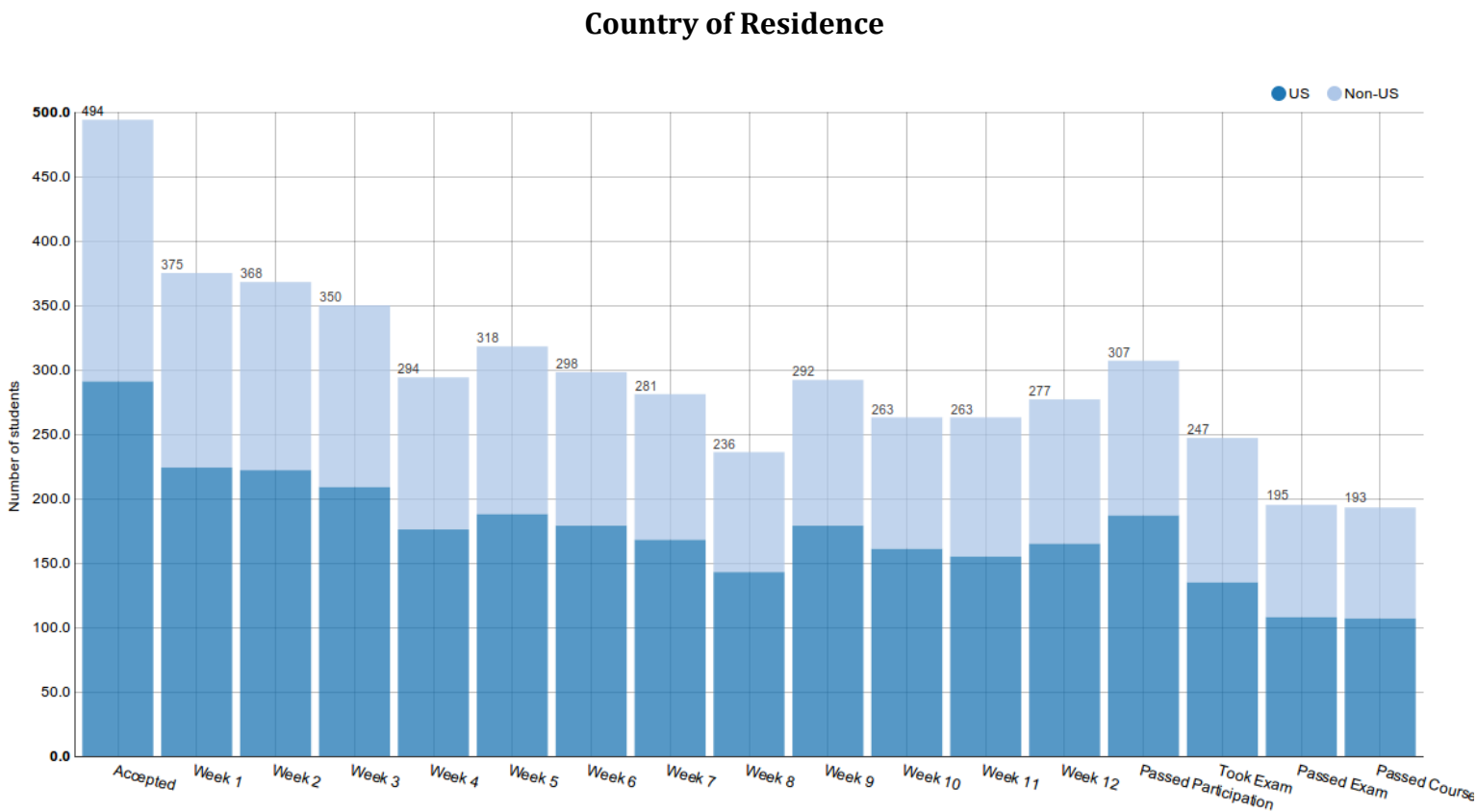
We are still analyzing this large body of data. But we are already confident that, overall, the venture was a success. A summary of the key indicators follows.

Retention and Graduation Rates

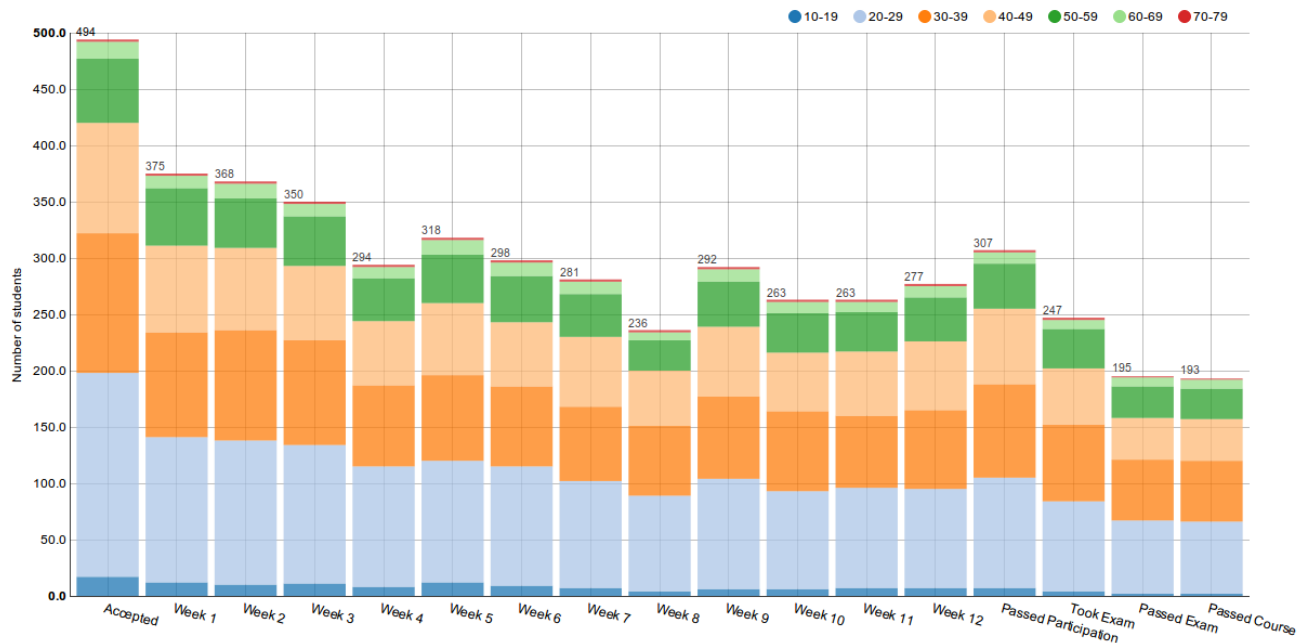
One of the criticisms of "massive" open online courses concerns retention of students. In combination, the various features of the edX component of CopyrightX seem to have generated a substantially higher retention rate. Of the 500 admitted students, 277 (55.4%) attended the final meetings of their discussion groups, 307 (61.4%) satisfied the participation requirements set by the teaching fellows, 247 (49.4%) took the final examination, 195 (39%) passed the examination,

and 193 (38.6%) both passed the examination and satisfied the participation requirement – and thus received a certificate of completion.

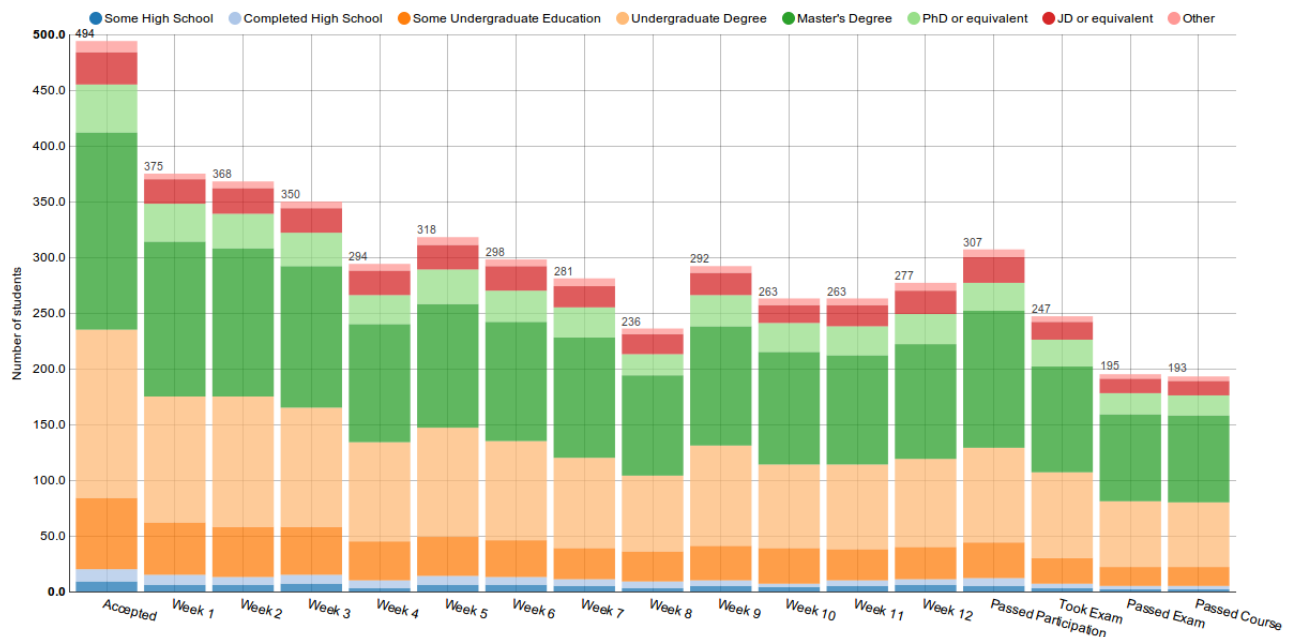
More detailed information concerning participation and graduation rates for subgroups of students can be derived from the following graphs. The first column indicates the number of students in each subgroup who accepted our offers of admission. The second through thirteenth column show attendance at each of the 12 weekly Socratic discussion sessions. The fourteenth column shows the number of participants who satisfied the course participation requirements set by the teaching fellows. The fifteen and sixteenth columns show the number of students who took the exam and the number who passed it. The final column shows the number who received a certificate of completion.



Age



Highest Educational Attainment



Some interesting comparisons lurk in these graphs. The following table, for example, juxtaposes the subgroups that appear in the first and third graph with respect to two different measures of success: (a) their graduation rates (i.e., the percentage of accepted students who received certificates of completion) and (b) their exam passage rates (i.e., the percentage of students taking the exam who passed the exam).

	U.S.	Non-U.S.	In high school	Finished high school	In college	B.A.	M.A.	Ph.D.	J.D.
Graduation Rate	37%	42%	22%	27%	27%	38%	44%	42%	68%
Exam Passage Rate	80%	78%	66%	75%	74%	75%	82%	75%	82%

Among the fruits of this comparison: U.S. residents and non-residents do not differ materially on either dimension; graduation rates rise gradually with educational attainment; but the exam passage rate is remarkably consistent across groups. Finally, the hypothesis that non-lawyers are both willing and able to master copyright law finds support in these numbers.

Participant Evaluations

As indicated above, we administered several surveys to the course participants. To maximize the comparability of their responses, whenever possible we used the 5-point scale employed in Harvard Law School course evaluations. For most questions, the five options were as follows: 1=unsatisfactory; 2=poor; 3=fair; 4=good; 5=excellent. In addition, on most issues, we asked participants open-ended questions.

Overall, CopyrightX was rated highly by all groups. The mean responses of the Harvard Law School students on the two most important course-evaluation questions were:

- Overall Effectiveness of Teacher: 4.817
- Overall Effectiveness of Course: 4.661.

Charts showing their responses to all of the questions in the official HLS course evaluation and in a supplementary evaluation (in which we solicited their views concerning specific features of the course) are set forth in Appendix B.

The responses of the HLS students to open-ended questions were also encouraging. In particular, they were nearly unanimous in their support for the “flipped-classroom” structure and for the organization of the in-class discussions around case studies. The most frequent suggestions for improving the course were: better integration of its various components; and reduction of the length of the lectures or the readings (or an increase in the credit hours for the course).

The edX students also gave the course high marks overall:

45. How valuable was your experience in CopyrightX for each of the following things?

#	Question	Not at all valuable	Somewhat valuable	Valuable	Very valuable	Extremely valuable	Total Responses	Mean
1	Increasing your intellectual curiosity	1	1	17	55	150	224	4.57
2	Improving your ability to contribute to civil society	2	12	41	81	88	224	4.08
3	Improving your ability to perform well professionally	4	15	37	66	103	225	4.11
4	Increasing your interest in sharing your knowledge with others	2	9	33	58	123	225	4.29
5	Improving your self-expression and creativity	14	20	49	56	85	224	3.79

Even more revealing, perhaps, were the edX students' responses to the open-ended question concerning the respects in which they found the course useful. These varied widely, but overwhelming majority were enthusiastic. Here's a sample:

- "This course filled some knowledge gaps for me in a pretty critical professional area. I never could have learned what I did in CopyrightX by reading on my own, attending a workshop, or even watching the lecture videos independently. It really was the combination of all of the different modes, and the sustained focus over time, that pulled everything together for me. Short of auditing (or enrolling in!) an actual law school class, I don't see how this could have been a better experience."
- "I've taken dozens of online courses over the years, this has been by far the best intellectually, pedagogically, and professionally. It provided a clear challenge but I believe I've learned a great deal. I will continue to review some of the videos that I'm a little unclear about."
- "As a military musician, I felt that participating in the class has help me be able to understand copyright enough to pass on to my superiors about the potential infringements we may be committing inadvertently. I also have had great discussion about copyright with my co-workers who produce and write music of their own."
- The Deputy Director of the Customs Intelligence Headquarters in Pakistan wrote: "The course has opened up new dimensions for me. I am more confident about my knowledge of Copyright Law and to some extent Intellectual Property Rights. As I

work for Pakistan Customs, I have been looking at our IPR Protection systems with a renewed interest, which unfortunately are almost non-existent. I hope to contribute meaningfully in this area now!"

- "I would like to express my profound gratitude to you for allowing me to participate in such engaging and enriching course. The lectures were superb and it was a great pleasure to engage in debate and discussion with my teaching fellow and fellow students from around the world with divergent views and experiences of intellectual property and the underling policy grounds. As a member of the English Bar, it was a real privilege to gain an insight into the U.S. legal system and I thoroughly enjoyed the comparative approach."
- A professional composer in Italy wrote: "It has been an incredible experience which I am going to remember; not only that, I am going to shape all of my future initiatives in a radically different way, after being able to participate in the meaningful discussion about things I have always been interested in...."
- The Head of the Copyright Resources Office of George Mason University Libraries wrote: "Thank you for offering and teaching the CopyrightX course. I can only imagine how much work was involved in creating the content and coordinating the enterprise. It was an experience I learned from and will never forget. The guest speakers were a bonus but your copyright diagram, to me, is invaluable."
- "I loved the class and am so glad that I was a part of it. I can also tell you that I have on numerous incidents already used my new-found knowledge (primarily the theoretical underpinnings of certain applications of copyright law to film, tv, music and software) in my entertainment law practice."
- "I am a working novelist who also works for an educational publishing firm. Learning about copyright law gives me a better sense of how it affects me. Far more, it has focused my attention on the kinds of protection I want and need as a working writer, what I feel about creative endeavor (boo, hiss, utility theory; it's all wrong), and what I want to do with my own published works going forward. I do not want to focus on production and distribution—it has relatively little value. I want rather to focus on the spectrum that stretches between consumptive use and transformative art, the monetary value of transformative art to the original work, and the role of indexing and indexing standards, visibility, and publicity. What production and distribution were to works on paper, visibility is becoming to digital works. It's not strictly a copyright issue, but I think it's one of the basic issues of 21st-century publishing. CopyrightX has given me some background to pursue these issues more intelligently."
- "I took this course while on maternity leave (baby currently 4 months) so this has been very valuable for keeping me intellectually stimulated until I return to work. The nature of the course meant it was able to fit in around feeding/sleeping patterns – where other course formats would be prohibitive to parents seeking to further their education in balance with family life."
- "From an engineer's perspective the workings of the law system seemed chaotic, it seemed gray (compared to black(0) and white(1) of the world of the digital engineer). But as the course progressed and specially reading the course materials, the impression that was left was that the gray is made of lots of tiny black and white."

- “I am an attorney by profession, and my main interest in reading the edX copyright law course was to obtain a basic but comprehensive understanding of the principles and legal approaches. The course has by far exceeded my expectations in this regard. On a practical level, copyright law is not a significant area of practice in my jurisdiction, and there has been negligible public discussion of this topic, though this is sure to change in the relatively near future. Presently, as my jurisdiction has a vibrant off-shore commercial presence, copyright law is likely to be more important when dealing with assets entailing copyrighted works.”
- “I own my own business. Our company makes websites, produces videos and mobile applications. We also provide live video streaming services. Taking this class has given me a broad understanding of copyright law and will allow me to better protect our own works and the work that we do for our clients without infringing on the rights of others.”
- “Well, I unexpectedly spotted a little oopsie that could save my company from bankruptcy some day. So there's that. And I enlarged the knowledge I need to protect myself while enjoying my weekend artistic hobby/job. So there's that, too. But I also really enjoyed knowing that I was very likely correct in phoning and writing one of my senators to complain about a certain bill he co-sponsored. And last, but not least, I'd forgotten how much fun it could be to wrestle with the intricacies of a fairly abstract intellectual topic and to sense myself stretching mentally.”
- “I have been working on the IPR field for more than 10 years as a contractor legal advisor for the Uruguayan and U.S. Government. The course provided me with the ability to improve the aforementioned skills.”
- “This was not the first instruction or reading I had done about intellectual property generally or specifically copyright. It was however by far the most informed, comprehensive, and satisfying. The lectures were an intellectual feast. The suites of materials, catalyzed by the section meetings, have given me confidence in this topic that I have not experienced in any other way. I feel much more equipped to challenge things I see – results, proposals, theories, ideas – with much greater comfort. With that sense of ease will come greater frequency of interrogating future material. This has been a truly spectacular learning experience. I am very grateful for this opportunity.”
- “I had high expectations for this course, and I am greatly satisfied they were met. I feel I received a world-class education on copyright tailored to the professional working in a copyright-related field. It was the perfect balance of theory, fact and normative discussion.”

The Components of the Course

Most of the novel features of CopyrightX seem to have worked well. In several areas, however, there is room for improvement. This section analyzes the separate components of the course – and indicates how we plan to adjust each of them in 2014.

1. Lectures

The edX students were generally enthusiastic about the quality and value of the recorded lectures. They seem to have served their intended function of providing the analytical spine for the course. Participants' ability to vary the speed with which the lectures were played¹⁰ and to replay them when reviewing material for the exam appears to have increased their utility. The data from the edX course evaluations confirm these reactions:

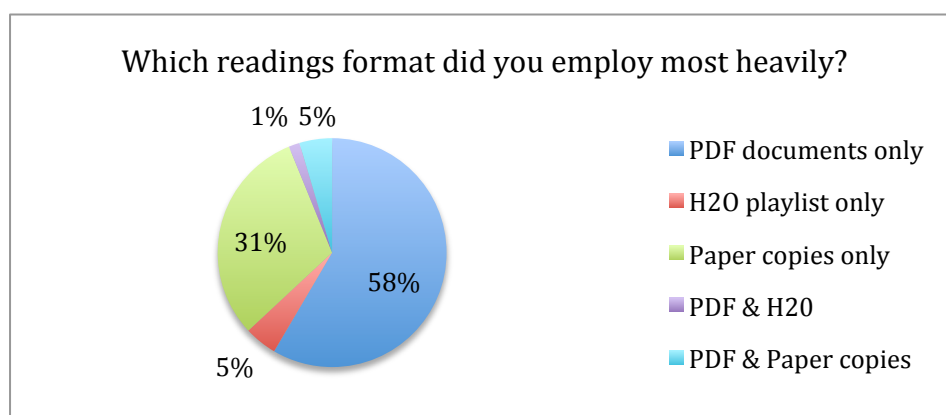
- Overall Quality of the Lectures: 4.58
- How Comprehensible were the Lectures: 4.30

The assessment of the lectures by the HLS students was also favorable, but not quite so enthusiastic. The average score on the pertinent question in the supplementary course evaluation was 4.29. One of the HLS students' most frequent criticisms was that the YouTube platform on which they (unlike the edX students) watched the lectures did not permit them to vary their speed or to download them. We plan to remedy this in 2014.

The content of the lectures was widely endorsed. The only respect in which we plan to change them is to replace segments that address issues that in the past eight months have undergone significant change with updated segments.

2. Reading Assignments

Overall, the readings also were well received by the course participants. The average assessment of the quality of the readings by the HLS students was 4.23. The HLS students' assessments of the variety of formats in which the readings were made available were also favorable. They made use of those alternative formats with the following relative frequency:



The most frequent criticisms by the HLS students were that (a) the judicial opinions should be more tightly edited; and (b) the total number of assigned opinions should be reduced. In 2014, I do not plan to accommodate the first of these requests. In my judgment, traditional casebooks have led many law students to expect unrealistically abridged versions of cases. However, I do

¹⁰ 60% of the EdX participants reported watching the lectures at “regular” speed; 1% watched them at 0.75x speed; 25% watched them at 1.25x speed; and 14% watched them at 1.5x speed.

plan to reduce the total number of opinions by approximately 25% – relying more heavily on the recorded lectures to convey basic doctrinal information.

The mean response of the edX students to the question on the “Overall Quality of the Assigned Readings” was 4.11. Their mean response to the question, “How Comprehensible were the Assigned Readings,” was a bit lower – 3.61 – but that does not seem surprising or troubling, given the technical nature of the material and the lack of specialized training on the part of most of the course participants.

The two edX curricula proved equally effective in teaching students the principles of copyright law; there was no significant difference in the performances on the final exam of the students who used the case-law curriculum and the students who used the global curriculum.¹¹ However, the edX students preferred the case-law curriculum by a substantial margin. This was true even of the students who resided in countries other than the United States. Evidently, probing deeply the copyright law of a single jurisdiction through close engagement with judicial opinions was more satisfying than surveying the law in a variety of countries. In addition, the teaching fellows were more familiar with the material in the case-law curriculum and thus more comfortable teaching it.

These considerations have prompted me to decide that, in 2014, we will use for the online students a subset of the U.S.-centric case-law curriculum that I use in the HLS Copyright class.

3. Discussions

Almost without exception, the HLS students expressed enthusiasm for the classroom discussions, which consisted of Socratic analyses of case studies. In 2014, I plan to preserve this important dimension of the HLS course – but to adjust it in two ways: (a) provide in advance of each class summaries of the facts of the more complex of the case studies, thereby enabling students to reflect on the problems at greater leisure and prepare their answers; and (b) conclude each Socratic inquiry with a brief summary of the lessons generated by the case study at issue.

Conducting synchronous online discussions of case studies in the edX component of the course proved more difficult than the synchronous face-to-face discussions at HLS, but ultimately was also highly successful. The Adobe Connect software that we employed for the edX seminars initially proved to be a serious distraction. Many edX students and teaching fellows found it difficult or tedious to learn to operate the software, and some students, particularly in developing countries, found that they had insufficient bandwidth to participate in the video-based portions of the discussions. For a few, the impediments proved so formidable that they dropped the course entirely or chose thereafter to participate exclusively through the asynchronous discussions.

Within a few weeks, however, most of these technical difficulties fell away. By disabling some of the features of the software, the teaching fellows reduced the bandwidth demands. And most of the edX students became increasingly adept in using the software.

¹¹ The exam passage rate for students who used the case-law curriculum was $100/127 = 78.7\%$. The rate for students who used the global curriculum was $95/120 = 79.1\%$.

By the mid-point of the course, many teaching fellows reported that they had found ways in which the technology could enrich rather than inhibit discussion. In particular, their capacity to conduct snap “polls” of their students, to monitor text-based “chats” among the students that paralleled their oral exchanges, and to present case studies efficiently through the use of slides all proved beneficial.

With respect to substance, the discussion sections were a clear success. The edX participants were nearly unanimous that the sections were a crucial feature of the course. To a large extent, this success reflects the skill and commitment of the teaching fellows. Without exception, they threw themselves into the venture. They prepared thoroughly for their seminars, experimented with pedagogies, adjusted to the strengths and weaknesses of their particular students – and taught brilliantly.

Many seem to have benefited from consultation with their peers and with me. Each week, I met with all of the teaching fellows. Early in the semester, the bulk of the time in those meetings focused on logistical issues or adjustments of the course design. By March, however, the meetings had come to focus on the content of the material that was being taught in that particular week and the most effective ways of conveying it. Additionally, the teaching fellows shared their experiences with one another via email. After each seminar, many of the fellows would circulate summaries of their sessions, including assessments of what worked and what did not, enabling their colleagues whose meetings came later in the week to learn from their experiences.

The benefits of these efforts to the edX students were clear from the course evaluations, set forth on the following page.

7. How would you rate your Teaching Fellow (TF) for each of the following:

#	Question	Unsatisfactory	Poor	Fair	Good	Excellent	Total Responses	Mean
1	Knowledge of subject matter	0	0	4	48	184	236	4.76
2	Clarity and organization of presentation	1	2	12	65	157	237	4.58
3	Responsiveness to student questions during section meetings	0	1	3	34	199	237	4.82
4	Presentation/acceptance of alternative viewpoints	0	0	9	27	200	236	4.81
5	Overall effectiveness as a teacher	0	2	10	49	176	237	4.68

A substantial majority of the edX participants described themselves as “extremely satisfied” with their experiences as part of a small section. Typical comments:

- “This made the difference for me – other online courses with thousands of students and no face time lack focus and students lose commitment. I have tried other courses but dropped off a couple of times. I looked forward to the sections,

I prepared for them and appreciated connecting with the teaching fellow and the other students from around the world. It was quite amazing!"

- "This was probably the single best aspect of the class because it allowed a level of interaction not possible in a large-group setting. Our section grew together during the course, and I will truly miss being a part of that. Ana's handling of the group was excellent; she encouraged those who were more reticent to speak up, kept the class moving, and answered all questions. The class would not have been nearly as good without this approach."
- "It made it much more like a university class than MOOCs I'd taken before; there was a real impetus to make sure the work was done before class and I felt that I understood the material better after the class."

The benefits to the teaching fellows themselves were also large. All reported (anonymously) that their teaching had deepened their own understanding of copyright law. This benefit did come at a cost: All of the fellows reported that teaching the course had required much more work than they anticipated (and more than was reflected by the two course credits they received for their efforts). However, all indicated that they were nevertheless glad that they had chosen to get involved.

In 2014, we will preserve this feature of the course. However, we will attempt in two ways to address the teaching fellows' reports of work overload: (a) we will reduce sharply the teaching fellows' administrative responsibilities, freeing them to focus on teaching their students; and (b) we will increase the course credits available to the teaching fellows from two to three. We estimate that, in this revised format, each teaching fellow will devote to the venture roughly 10 hours per week.

4. Asynchronous Discussions

The asynchronous online discussions represented the only aspect of the course that we seriously misjudged. This component of the HLS course received the lowest evaluations. Some of the HLS students' criticism concerned technology: they gave the "isites" platform¹² on which the asynchronous discussions were conducted an average rating of only 3.83. But in part their criticisms were substantive; the students felt that the online discussions were insufficiently integrated into the body of the course. Both of these objections must be addressed in 2014.

The edX students' assessments of the value of the asynchronous discussions were even more critical. The mean responses to the relevant questions were 2.91 and 2.58. We are not yet sure of the causes of the weakness of this dimension of the edX course. One possibility is that the software we employed was not optimal. The participants' assessments of both the edX discussion tool and NB were lukewarm. A plurality recommended that, in future versions of the course, we should replace both with a different program.

Another possibility is that unreliable bandwidth undermined the ability of some students to engage in the online discussions. This problem affected usage of NB in particular, because students could only employ that system conveniently if they read the course materials online. If, because of bandwidth limitations, they downloaded the assignments and then read them offline,

¹² See <http://isites.harvard.edu/icb/icb.do>.

then submission of comments and questions through NB became time-consuming and cumbersome. These problems unfortunately may prevent us from reaching confident conclusions concerning the efficacy of NB.

Another possible cause is that we provided too little structure and supervision for the asynchronous discussions. Not all of the teaching fellows participated actively in the online discussions, and the course team did not provide instructions or advice concerning the most productive ways that participants might use the forums. Some participants found the paucity of guidance disorienting and unhelpful. Typical comments:

- “I didn't learn much from the forum, and I didn't feel compelled to post in the forum very much. I felt that it could have been more structured. For example, I feel that there would have been livelier discussion if some brainstorming questions were provided each week so that students could post more specific ideas about the week's topic. Perhaps the instructor could post a link to a controversial article regarding the copyright topic of the week, and then ask for students' opinions on the controversy, based on what they learned from the readings and lectures.”
- “I haven't been a fan of the discussion forums in previous online classes that I've taken. I did find the discussion forum to be more helpful in this class than in the past. I do wish that it had been used more often though. We brought up a lot of things in class that could/should have been flushed out more in the discussion forum. Also, perhaps a little more oversight by the TF. This not to say anything negative against [my TF] or how she interacted, but if the TF guides the discussion more, more people may participate.”

Another possible cause of the edX students' dissatisfaction – also suggested by the preceding comments – is that we failed to make sufficiently clear the substantive relationship between the asynchronous discussions and the other components of the course.

A final possible cause is that creating discussion forums that included only members of individual edX sections proved unexpectedly difficult – and was not completed until a few weeks after the course had launched. By then, we may have forfeited our chance to integrate the forums into the culture and operations of the sections.

In 2014, we hope to improve this dimension of the course by making (at least) the following changes:

- Improve the software we use to host the discussions – and provide all students better instruction concerning how best to use it;
- Provide each student access to a moderated small discussion group limited to the members of his or her section;
- Provide each student in addition access to an unsupervised discussion group open to all other students (HLS students; online students; and participants in the satellites).

Together, the moderated small-group discussions might be analogized to a series of “gardens” – closed, cultivated, private, and safe. The unmoderated shared space could be analogized to a

“forest” – open, public, riskier. By providing both options to all students, we hope to meet their dissimilar educational needs.

5. Special Events

In contrast to the asynchronous discussions, the six “special events” were generally well regarded. Our hope was that these sessions would provide the students in all three of the audiences for CopyrightX a rich and balanced understanding of the ways in which copyright law affects many fields of art, culture, and industry and of the beliefs of some leaders in those fields. To that end, we tried to recruit a diverse array of experts. The speakers who generously volunteered to make presentations were highly qualified:

The Interests of Authors (February 6):

- Dale Cendali, Partner in Kirkland & Ellis; head of the Firm's Copyright, Trademark, Internet and Advertising Practice Group¹³
- Richard Kelly, professional photographer¹⁴
- William Landay, award-winning novelist¹⁵
- John Drake, Communications Manager at Harmonix (developer of Rock Band)¹⁶

Intellectual-Property Protection for Fashion (February 13):

- Jeannie Suk, Professor of Law, Harvard (advocate of increased protection for innovations in fashion)¹⁷
- Chris Sprigman, Professor of Law, University of Virginia (opponent of increased protection for innovations in fashion)¹⁸

Extra-Legal Norms (February 27):

- Jim Mendrinos, standup comedian¹⁹
- Dotan Oliar, Professor of Law, University of Virginia²⁰

Appropriation Art (April 3):

- Shepard Fairey, graphic artist²¹
- Marita Sturken, Chair of Media Studies Department, New York University²²
- Geoffrey Stewart, Partner in Jones Day²³

Free Culture (April 17):

¹³ See <http://www.kirkland.com/sitecontent.cfm?contentID=220&itemID=9692>.

¹⁴ See <http://www.richardkelly.com/#mi=1&pt=0&pi=2&p=-1&a=0&at=0>.

¹⁵ See <http://www.williamlanday.com>.

¹⁶ See <http://www.youtube.com/watch?v=uULm555Fz-I>.

¹⁷ See <http://www.law.harvard.edu/faculty/suk/>.

¹⁸ See <http://cyberlaw.stanford.edu/blog/christopher-sprigman>.

¹⁹ See <http://gothamcomedyclub.com/show.cfm?id=73150>.

²⁰ See <http://www.law.virginia.edu/lawweb/faculty/nsf/FHPbI/1196152>.

²¹ See <http://www.obeygiant.com>.

²² See http://steinhardt.nyu.edu/faculty_bios/view/Marita_Sturken.

²³ See <http://www.jonesday.com/gstewart/>.

- Larry Lessig, Professor of Law, Harvard; founder of Creative Commons²⁴

Digital Libraries (April 24):

- Robert Darnton, Carl H. Pforzheimer University Professor and University Librarian, Harvard University²⁵
- John Palfrey, Head of School, Phillips Academy²⁶

All made serious and thoughtful presentations and responded frankly to students' questions.²⁷

Because these events were unscripted, they were less efficient vehicles for conveying information than either the lectures or the discussion groups. Nevertheless, most of the edX participants seem to have found them illuminating – as is evident from the answers contained in the chart on the following page.

28. How valuable were each of the special events?

#	Question	Not at all valuable	Somewhat valuable	Valuable	Very valuable	Extremely valuable	Total Responses	Mean
1	Event 1, The Interests of Authors	1	9	59	79	71	219	3.96
2	Event 2, IP Protection for Fashion	2	17	51	74	72	216	3.91
3	Event 3, Extralegal Norms	2	13	73	68	61	217	3.80
4	Event 4, Appropriation Art	2	6	41	74	93	216	4.16
5	Event 5, Free Culture	2	7	28	55	123	215	4.35
6	Event 6, Orphan Works and Digital Libraries	5	9	45	68	82	209	4.02

6. Exam

A copy of the final examination given to the edX students appears in Appendix C. As indicated above, it resembled the examination given to the Harvard Law School students. The first of the three questions, in particular, closely tracked the analogous question in the HLS exam. It differed

²⁴ See <http://www.lessig.org>.

²⁵ See <http://history.fas.harvard.edu/people/faculty/darnton.php>.

²⁶ See <http://jpalfrey.andover.edu>.

²⁷ Recordings of all six events can be obtained through http://cyber.law.harvard.edu/people/tfisher/CopyrightX_Events_2013.htm.

in only two respects: it provided the edX students (many of whom knew little about U.S. culture) more background information; and it gave the students more guidance concerning the issues that they should address in their answers.

There was near unanimity among the edX students that the exam was difficult. They were given 24 hours to complete their responses. I had estimated that it would take them roughly four hours to finish, but most participants seemed to have devoted at least eight hours to the test. At least a few worked around the clock.

No participant seems to believe that the content of the exam was unfair – in other words, that it did not accurately reflect the content of the course or that it tested skills that the course did not inculcate. However, some participants (particularly those who did not pass) thought the grading criteria were too severe.

My tentative inclination is not to alter the grading system. It is indeed regrettable that roughly 20% of the students who took the exam – some of whom had worked very hard – did not pass. But on balance, the merits of rigor, the cautionary signal sent to future students concerning the nature of the course, and the value of making certificates of completion meaningful seem to warrant incurring that cost.

We made no systematic effort to prevent plagiarism on the exam. When grading the responses, we discovered one instance of plagiarism (and failed the student); most likely, there were at least a few others that we failed to detect. In the future, we may have to consider mechanisms for discouraging cheating, but as yet no reliable system is apparent.

7. The Network

The “satellite” section in Jamaica pioneered in 2013 by Sarah Hsia seems to have worked remarkably well. Sarah assembled each Saturday morning in Kingston an accomplished and diverse group of participants. Together they discussed the issues presented by the week’s lecture and readings – both in general and from the standpoint of Jamaica’s distinctive creative culture.

Encouraged by this example, we hope to catalyze the organization of many comparable satellites in other countries in 2014. The forms that the new satellites take could (and probably should) vary, but our tentative view is that they should have in common the following features:

- Each should be organized and run by a scholar, teacher, or practitioner who is familiar with the copyright system – and thus can guide, effectively and accurately, the participants’ exploration of that system.
- Each should be limited to 30 students – a small enough number to facilitate the kinds of discussions that proved so effective in the edX sections and in the Jamaica satellite in 2013.
- Each should include (at least) one synchronous discussion session (either face-to-face or online) per week.
- The participants in the satellites should watch each week the recorded lecture (in order to provide them a common set of reference points). However, the reading assignments could be quite different from those employed in the HLS and edX

segments of the course. Most obviously, the readings used by a given satellite might highlight the distinctive features of copyright law in the country in which the satellite were located, rather than U.S. copyright law.

In all of the foregoing respects, our hope is that the satellites would follow the pattern already established by Sarah Hsia and the Jamaica group in 2013. In one major respect, however, we hope to change the posture of the satellites in 2014: We would like them to be better integrated into the CopyrightX course as a whole. Among the reforms that would facilitate such integration would be the following:

- As mentioned above, the participants in the satellites would all have access to the unmoderated online discussion forum, where they could engage in conversations with the HLS and edX students.
- All of the satellite participants would be invited to participate in the live interactive webcasts of the “special events” offered during the course.
- The leaders of the satellites would have access to the same basket of case studies that I use when teaching the HLS course and that the teaching fellows use when teaching their online sections.
- Additionally, each satellite would be invited to contribute to the basket one or more case studies that could then be employed by the other satellite teachers, the teaching fellows, and myself in our own teaching. Most likely, a case study of this sort would involve a copyright-related controversy that arose in the country where the satellite is located – and that turned upon the copyright law of that country. Preparing and contributing such a case study would not be a precondition for participation in CopyrightX, but doing so would both enrich the course as a whole and help to knit it together.

This plan is as yet tentative. The character of the satellites will likely change as we discuss options with the teachers of them.

8. A Permanent Community?

Several of the graduates of the 2013 version of the course expressed interest in continuing to participate in discussions about recent developments in copyright law. Our tentative plan is to try to satisfy their interest in two related ways. First, we plan to invite all alumni of CopyrightX 2013 to engage in the plenary synchronous discussion forum (“the forest”) associated with CopyrightX 2014. Second, if that forum proves vibrant, we plan to continue to host it after the conclusion of the 2014 version of the course.

Appendix A: Educational Technologies

	HLS	edX	Satellite
(1) Lectures	Posted on YouTube	Posted on edX	Posted on YouTube
(2) Readings	PDF; MSWord; H2O	PDF and HTML	PDF; MSWord; H2O
(3) Synchronous Discussions	Traditional Class	Adobe Connect	Traditional Class
(4) Asynchronous Discussions	Harvard iSites ²⁸	edX Discussion Forum & NB	None
(5) Special Events	In person; Question Tool	Webcast through Adobe Connect; Question Tool	Webcast

²⁸ See http://isites.harvard.edu/icb/icb.do?keyword=course_isites_help&tabgroupid=icb.tabgroup41541.

Appendix B: HLS Course Evaluations

Harvard Law School Student Evaluation

Semester: Spring 2013
Instructor: Prof. William Fisher
Course Code: 2042 Copyright

86 Enrolled
64 Returned

Course Coordinator		1L		2L		3L		LLM		CReg		1-Unsatisfactory ----- 5-Excellent							
		8	31	19	2							N/A	1	2	3	4		Avg.	(N)
PROFESSOR/ INSTRUCTOR	1. Knowledge of subject matter															1	61	4.984	62
	2. Clarity and organization of presentation														3	17	42	4.629	62
	3. Responsiveness to student concerns and questions											3				13	46	4.780	59
	4. Accessibility outside of class											26		2	5	3	23	4.424	33
	5. Presentation/Acceptance of alternative viewpoints											1			1	3	55	4.915	59
	6. Overall effectiveness of teacher														1	9	50	4.817	60

		1-Not at All		3-Somewhat		5-Very Much			
		N/A	1	2	3	4		Avg.	(N)
SUBSTANCE OF COURSE	1. Day to day the course was interesting and important				4	18	38	4.567	60
	2. Was this course valuable to your understanding of:								
	a. How to analyze cases				6	22	31	4.424	59
	b. How to interpret statutes and regulations	1			5	15	37	4.561	57
	c. How legal doctrine connects to legal theory				1	10	45	4.786	56
	d. How legal doctrine connects to legal practice	3		1	2	22	30	4.473	55
	e. How to draft legal documents	37	1		10	5	5	3.619	21
	f. How to use legal rules to shape transactions	29	1		2	11	14	4.321	28
	g. How to use legal rules to design legal institutions	15		2	6	12	21	4.268	41
	3. Overall effectiveness of course				1-Unsatisfactory ----- 5-Excellent				
				1	18	40	4.661	59	

		1-Unsatisfactory ----- 5-Excellent						
		N/A	1	2	3	4	Avg.	
COURSE	1. Organization of materials				5	12	44	4.639
MATERIALS	2. Quality/Editing of materials	1		2	8	16	35	4.377
ASSIGNMENTS	3. Relevance of assignments to course				4	17	41	4.597
WORKLOAD	4. Workload		3	4	8	23	20	3.914

a. On Average, how much time did you spend preparing for class each week?	Avg.
(1) Less than 2 hours	2
(2) 2-4 hours	17
(3) 4-6 hours	22
(4) 6-8 hours	14
(5) More than 8 hours	5

b. How did the overall preparation and engagement of your fellow **Avg.** students in the course compare to the other courses you have **3,574** taken at HLS?

(1) much lower	
(2) somewhat lower	5
(3) about the same	24
(4) somewhat higher	24
(5) much higher	8

1. What percentage of the overall class time in this course was spent... (Total no greater than 100%)	N/A	10%	20	30	40	50	60	70	80	90	100%	(N)
a. In dialogue between the teacher and single students	2	2	11	16	5	7	3	2	1			47
b. In class discussion closely led by the professor	5	10	14	10	4	5	1	1		1		46
c. In open-ended class discussion	21	17	5									22
d. In discussion among students in small groups	36	1		1								2
e. In lecture by the professor	2	11	14	15	7	3	1					51
f. In presentations by other students	36	1										1
g. In presentations by guests	9	16	17	4	1							38
h. In other forms of instruction	26	6	1	3	1							11

Copyright 2013
Supplement to Course Evaluation

1=unsatisfactory ----- 5=excellent

CONTENT

Recorded lectures: 4.29

Case studies used in class: 4.47

Events

1. Interests of Authors: 4.02
2. Fashion: 4.29
3. Extralegal Norms: 3.72
4. Appropriation Art: 4.33
5. Free Culture: 4.61

Readings: 4.23

Maps

1. Copyright Law: 4.46
2. IP Theory: 4.34

TECHNOLOGY

Technology for the recorded lectures: 4.52

Technology for the events: 4.29

Technology for discussion forum: 3.83

Technology for maps: 4.13

Technology for readings: 4.58

Appendix C: Examination Given to edX Students

CopyrightX

Spring 2013

Professor William Fisher

Final Examination

Instructions

This is an “open-book” examination. When preparing your answer, you may read, watch, or rely on any material you wish. Once the exam has begun, however, you may not consult in any way with any other person concerning any aspect of the test.

The exam will be distributed at noon GMT on Saturday, May 11, 2013. Your response is due no later than noon GMT on Sunday, May 12.

You may not submit any comments concerning the exam to the EdX discussion board or any other forum between noon GMT on May 11 and noon GMT on May 12. However, after noon GMT on May 12, you are free (indeed, encouraged) to submit such comments to the EdX discussion board. (EdX participants who have arranged to take the exam at a later date may not consult the discussion board between noon GMT on May 12 and the time at which they submit their final answers.)

You must prepare your answer using one of the following file formats: .doc, .docx, .pdf, .odt, or .fodt. (If you do not currently have a word-processing program capable of generating files in one of these formats, such a program can be downloaded for free from: www.libreoffice.org/download.) Please use the Times New Roman 12-point font and 1.25” margins. Please use the following convention to name the file containing your answer: "Section#_LastName_FirstName." For example, if you are a member of Section A1 and your name is Andrea Jones, then your answer should be saved as a file named: "A1_Jones_Andrea."

You must submit your answer by attaching it to an email sent, prior to noon GMT on May 12, to copyrightx-exam@cyber.law.harvard.edu. Soon after you send your email to that address, you should receive an automated reply, which will serve as a confirmation that the course team has received your exam. If you do not receive such an auto-reply, please re-send your email to the same address. If you still do not receive an auto-reply, please email a copy of your answer to nlevy@cyber.law.harvard.edu.

Neither the course team nor your teaching fellow will respond to questions concerning the exam unless they concern emergencies. If an emergency does arise, please email copyrightx-exam-emergency@cyber.law.harvard.edu, providing details. Someone will respond as soon as

possible. If you find any aspect of the exam's content or instructions to be ambiguous, do not request a clarification. Instead, develop your own interpretation that resolves the ambiguity and make that interpretation explicit in your response.

The exam contains three questions. You must answer all three. Your answer to the first question may not exceed 1500 words. Your answer to the second question may not exceed 1000 words. Your answer to the third question may not exceed 1000 words. These length limitations will be strictly enforced.

Your answers will be weighted as follows:

Question #1: 40%

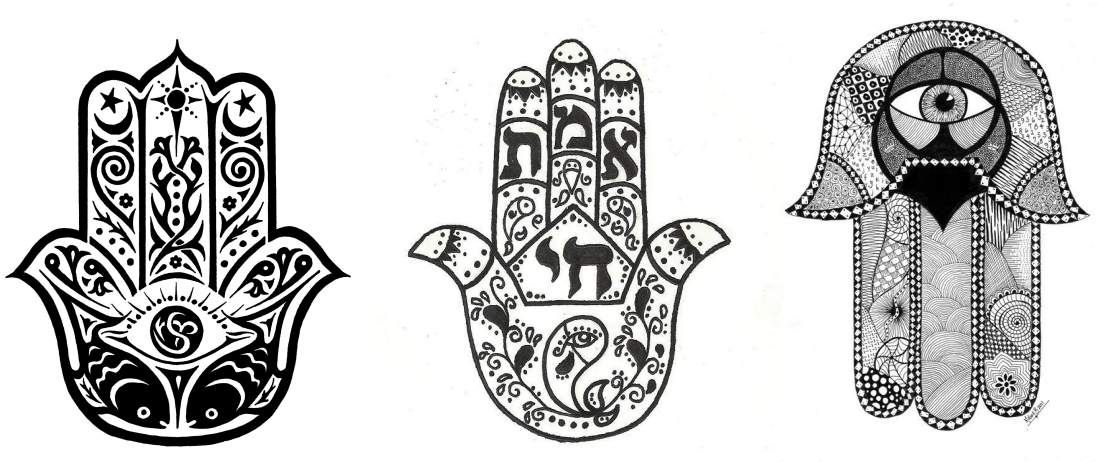
Question #2: 30%

Question #3: 30%.

Question #1

Assume the following facts:

The Hamsa is an ancient image that continues to be widely used in the Middle East and North Africa. It consists of a stylized depiction of an open palm. It symbolizes, among other things, protection, fertility, and sexuality. All of the major Western religions use variants of the image. In Islam, it is known as the Hand of Fatima; in Judaism, as the Hand of Miriam; in Christianity, as the Hand of Mary. Three examples of the image are set forth below:



Although, as you can see, the image is conventionally presented as symmetrical, it is widely understood to represent the palm of a right hand.

Luke Lukacs is an agnostic, left-handed, Caucasian college student living in Massachusetts in the United States. In 2008, Luke campaigned actively for Barack Obama. Luke was deeply disappointed, however, by Obama's performance during his first term as President of the United States. In the summer of 2012, Luke decided not to campaign for Obama's reelection. He did not support Mitt Romney, Obama's opponent, but he wanted somehow to express his disillusionment with Obama. For this purpose, he designed a modified version of the Hamsa image, depicting the open palm of a left hand. (The significance of this design will become apparent shortly.)

Carol is a friend of Luke's. She makes jewelry as a hobby. In September of 2012, Luke gave Carol a detailed drawing of his design and asked her to fabricate out of sterling silver an earring incorporating the image he had created. A week later, she gave him the earring depicted in Figure 1 on the following page.



Figure 1

Pleased with Carol's creation, Luke began wearing it every day in his left ear. When friends or strangers asked him about the unusual shape of the earring, he explained: "It represents my deep commitment to the political Left and my anger at Obama's betrayal of Progressivism. It also represents my condemnation of all forms of discrimination. Discrimination against left-handed people like me is of course trivial, but I mean to associate myself with everyone working to combat more fundamental forms of discriminatory treatment." Most of the people to whom Luke expressed these views dismissed them as simplistic. A few people, however, were supportive or sympathetic.

In October of 2012, John, a reporter for the Boston Globe, the leading newspaper in Massachusetts, interviewed Luke for a story about college students who no longer supported Obama. Katherine, a photographer working for the Globe, took Luke's picture. The Globe published the story just before the November election. In the accompanying photo, Luke's face was turned slightly to his right, enabling the viewer to see clearly his distinctive earring.

Obama's reelection in November of 2012 did little to alter Luke's views. During March of 2013, he visited relatives in New York City. He happened to notice, on a street vendor's rack of inexpensive jewelry, a necklace containing a pendant that, to his eye, looked remarkably like his earring. The pendant is shown in Figure 2 on the following page.



Figure 2

Suspicious that someone had “stolen” his design, Luke checked the displays of other street vendors and searched the Internet for “left-handed hamsas.” He was dismayed to find many. Some were identical to the pendant shown in Figure 2. Luke grudgingly acknowledged that others, like the ones shown in Figure 3 and Figure 4, deviated from his design in more significant ways.



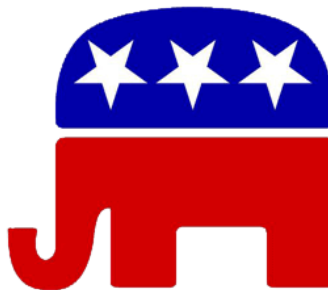
Figure 3



Figure 4

The pendant that Luke found most offensive seemed to replicate his design verbatim except for two modifications: the image was “flipped” horizontally so that it depicted the palm of a right hand instead of a left hand; and the thumb was altered to represent the trunk of an elephant.

(To understand Luke’s anger, it may help to know that the Republican political party is the more conservative of the two major parties in the United States and that the mascot for the Republican party is an elephant. A typical rendering of that mascot is set forth below:



Luke assumed that the purpose of whoever had designed the elephant-shaped version of Luke’s original image was to allude to the Republican Party and thus to repudiate the ideals for which Luke had intended to express support.)

By questioning street vendors and calling the operators of websites selling these various products, Luke soon ascertained that all of the products had been manufactured by one firm – the Acme Amulet Company, located in San Jose, California. He also learned that none of the

products had been manufactured by Acme prior to January of 2013. In other words, all had been created after the publication of the Boston Globe article in which his photograph appeared.

After he returned to school in late March, Luke happened to notice a classmate wearing a necklace containing the pendant depicted in Figure 4. When he asked her where she had found it, she responded that she had purchased it from a website to which she had been referred by the Jewish Museum Shop (JMS), an organization based in New York City. Luke investigated further and discovered that the website of the JMS contains brief descriptions of a small number of consumer products related to Judaism. The JMS does not itself sell those products, but provides hypertext links to other websites from which the products can be purchased. Each time a consumer follows such a link and buys a product, the JMS receives a small commission from the seller.

You have known Luke since childhood. He approaches you, recounts the foregoing story, and asks whether any of his legal rights have been abridged and, if so, what remedies might be available to him. Write Luke a letter containing no more than 1500 words. Your letter should address at least the following issues:

- (a) Does Luke's design enjoy any protection under copyright law? If so, what aspects of the design are protected?
- (b) Does Carol have any rights under copyright law?
- (c) Assuming that Luke's design enjoys some protection under copyright law, has the Acme Amulet Company violated any of the rights embodied in Section 106 of the U.S. Copyright Act?
- (d) If so, may the Acme Amulet Company avoid liability by invoking the fair-use doctrine?
- (e) If Acme may not avoid liability for direct copyright infringement, is the Jewish Museum Shop (JMS) secondarily liable?
- (f) If Acme or the JMS is deemed to have violated the Copyright Act, what remedies would be available to Luke?

If you need more information to answer any of these questions, say what that information is and why it matters.

You may assume that the correct answers to all of these questions depend entirely upon U.S. copyright law. In other words, for the purpose of this question, you need not discuss the contents of any international treaties or the copyright laws of any countries other than the United States.

You may also assume that the United States does not accord legal protection for most forms of "traditional knowledge." As a result, the ancient Hamsa image – exemplified by the designs reproduced on the top of page 3 of this exam – are in the public domain in the United States. However, you may assume that no one prior to Luke had created a left-handed Hamsa.

Finally, when preparing your answer to this question, keep in mind that Luke is interested only in what rights and remedies he might have under current U.S. copyright law. He is not interested in your opinion concerning what the law should be. In your responses to questions #2 and #3, below, you will have ample opportunity to express opinions of that sort.

Question #2

Select one of the following dimensions of copyright law:

- (a) the requirement of originality;
- (b) fair use;
- (c) moral rights;
- (d) traditional knowledge.

Briefly describe how the issue is addressed under the law of the United States and how it is addressed under the law of one other country. Which country's approach, in your judgment, is superior? Why? Your answer may not exceed 1000 words.

Question #3

Select one of the following dimensions of copyright law:

- (a) the idea/expression distinction;
- (b) copyright protection for innovations in fashion;
- (c) joint authorship;
- (d) termination rights;
- (e) appropriation art;
- (f) digital sampling of sound recordings;
- (g) circumvention of technological protection measures; or
- (h) the rights and privileges of libraries.

Then select one of the four intellectual-property theories that were examined in this course. What insight into how copyright law should address the dimension you select might be derived from the theory you select? How does your analysis illuminate the strengths and weaknesses of the theory? Your answer may not exceed 1000 words.

End of Exam